

MAIL TO:

STATE OF UTAH
DIVISION OF PURCHASING
3150 STATE OFFICE BUILDING, CAPITOL HILL
P.O. BOX 141061
SALT LAKE CITY, UTAH 84114-1061
TELEPHONE (801) 538-3026
<http://purchasing.utah.gov>

Invitation to BidSolicitation Number: **DG4018**Due Date: **03/23/04 at 3:00 P.M.**

Date Sent: March 10, 2004

Goods and services to be

MULTI-STEP BID TO PROVIDE COMPUTER SOFTWARE FOR THE DEPARTMENT OF WORKFORCE SERVICES' CUBS PROJECT**Please complete**

Company Name		Federal Tax Identification Number	
Ordering Address	City	State	Zip Code
Remittance Address (if different from ordering address)	City	State	Zip Code
Type <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Proprietorship <input type="checkbox"/> Government	Company Contact Person		
Telephone Number (include area code)	Fax Number (include area code)		
Company's Internet Web Address	Email Address		
Discount Terms (for bid purposes, bid discounts less than 30 days will not be considered)	Days Required for Delivery After Receipt of Order (see attached for any required minimums)		
<p>The following documents are included in this solicitation: Solicitation forms, instructions and general provisions, and specifications. <u>Please review all documents carefully before completing.</u></p> <p>The undersigned certifies that the goods or services offered are produced, mined, grown, manufactured, or performed in Utah. Yes ____ No _____. If no, enter where produced, etc. _____</p>			
Offeror's Authorized Representative's Signature		Date	
Type or Print Name		Position or Title	

STATE OF UTAH
DIVISION OF PURCHASING

Invitation to Bid

Solicitation Number: DG4018

Due Date: 03/23/04

Vendor Name:

DESCRIPTION
<p>MULTI-STEP BID TO PROVIDE COMPUTER SOFTWARE FOR THE DEPARTMENT OF WORKFORCE SERVICES' CUBS PROJECT PER ATTACHED SPECIFICATIONS.</p> <p>A PRE-BID CONFERENCE WILL BE HELD MARCH 15, 2004 FROM 2:00 TO 4:00 P.M. ALL QUESTIONS MUST BE SUBMITTED BY 5:00 P.M. FRIDAY, MARCH 12, 2004.</p> <p>FOR MORE INFORMATION AND CLARIFICATION PLEASE CONTACT ALAN CARLSEN AT 801-526-9392.</p> <p>WITH PURCHASING QUESTIONS OR CLARIFICATION PLEASE CONTACT DEBBIE GUNDERSEN AT 801-538-3150.</p> <p>*****</p> <p>REFERENCE RX: 600 4100000082</p>

INVITATION TO BID - INSTRUCTION AND GENERAL PROVISIONS

1. BID PREPARATION: (a) All prices and notations must be in ink or typewritten. (b) Price each item separately. Unit price shall be shown and a total price shall be entered for each item bid. Errors may be crossed out and corrections printed in ink or typewritten adjacent and must be initialed in ink by person signing quotation. (c) Unit price will govern, if there is an error in the extension. (d) Delivery time is critical and must be adhered to as specified. (e) Wherever in this document an item is defined by using a trade name of a manufacturer and/or model number, it is intended that the words, "or equivalent" apply. "Or equivalent" means any other brand that is equal in use, quality, economy and performance to the brand listed as determined by the Division of Purchasing & General Services (DIVISION). If the vendor lists a trade name and/or catalog number in the bid, the DIVISION will assume the item meets the specifications unless the bid clearly states it is an alternate, and describes specifically how it differs from the item specified. All bids must include complete manufacturer's descriptive literature if quoting an equivalent product. All products are to be of new, unused condition, unless otherwise requested in this solicitation. (f) By signing the bid the vendor certifies that all of the information provided is accurate, that they are willing and able to furnish the item(s) specified, and that prices quoted are correct. (g) This bid may not be withdrawn for a period of 60 days from bid due date.

2. SUBMITTING THE BID: (a) The bid must be signed in ink, sealed in a properly-addressed envelope, and either mailed or delivered to the DIVISION OF PURCHASING, 3150 State Office Building, Capitol Hill, Salt Lake City, UT 84114-1061 by the "Due Date and Time." **The "Bid Number" and "Due Date" must appear on the outside of the envelope.** (b) Bids, modifications, or corrections received after the closing time on the "Due Date" will be considered late and handled in accordance with the Utah Procurement Rules, section R33-3-109. (c) **Your bid will be considered only if it is submitted on the forms provided by the state. Facsimile transmission of bids to DIVISION will not be considered.** (d) All prices quoted must be both F.O.B. Origin per paragraph 1.(c) and F.O.B. Destination. Additional charges including but not limited to delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, costs of bonds, or for any other purpose must be included in the bid for consideration and approval by the DIVISION. Upon award of the contract, the shipping terms will be F.O.B. Destination, Freight Prepaid with freight charges to be added to the invoice unless otherwise specified by the DIVISION.

3. SOLICITATION AMENDMENTS: All changes to this solicitation will be made through written addendum only. Bidders are cautioned not to consider verbal modifications.

4. PROPRIETARY INFORMATION: Suppliers are required to mark any specific information contained in their bid which is not to be disclosed to the public or used for purposes other than the evaluation of the bid. Each request for nondisclosure must be accompanied by a specific justification explaining why the information is to be protected. Pricing and service elements of any bid will not to be considered proprietary. Bids submitted may to be reviewed and evaluated by any persons at the discretion of the state.

5. SAMPLES: Samples of item(s) specified in this bid, when required by DIVISION, must to be furnished free of charge to DIVISION. Any item not destroyed by tests may, upon request made at the time the sample is furnished, to be returned at the bidder's expense.

6. WARRANTY: The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah applies to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgement to

consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

7. DIVISION APPROVAL: Purchase orders placed, or contracts written, with the state of Utah, as a result of this bid, will not to be legally binding without the written approval of the director of the DIVISION.

8. AWARD OF CONTRACT: (a) the contract will to be awarded with reasonable promptness, by written notice, to the lowest responsible bidder that meets the specifications. Consideration will to be given to the quality of the product(s) to be supplied, conformity to the specifications, the purpose for which required, delivery time required, discount terms and other criteria set forth in this invitation to bid. (b) The bids are opened publicly in the presence of one or more witnesses. the name of each bidder, and the amount of the bid is recorded. Each bid, and the record, is open to public inspection. (c) The DIVISION may accept any item or group of items, or overall low bid. the DIVISION has the right to cancel this invitation to bid at any time prior to the award of contract. (d) The DIVISION can reject any and all bids. And it can waive any informality, or technicality in any bid received, if the DIVISION believes it would serve the best interest of the State. (e) Before, or after, the award of a contract the DIVISION has the right to inspect the bidder's premises and all business records to determine the holder's ability to meet contract requirements. (f) DIVISION does not guarantee to make any purchase under awarded contract(s). Estimated quantities are for bidding purposes only, and not to be interpreted as a guarantee to purchase any amount. (g) Utah has a reciprocal preference law which will to be applied against bidders bidding products or services produced in states which discriminate against Utah products. For details see Section 63-56 20.5 -20.6, Utah Code Annotated.

9. ANTI-DISCRIMINATION ACT: The bidder agrees to abide by the provisions of the Utah Anti-discrimination Act, Title 34 Chapter 35, U.C.A. 1953, as amended, and Title VI and Title VII of the Civil Rights Act of 1964 (42 USC2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities. Also bidder agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the workplace. Vendor must include this provision in every subcontract or purchase order relating to purchases by the State of Utah to insure that the subcontractors and vendors are bound by this provision.

10. DEBARMENT: The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by the STATE.

11. GOVERNING LAWS AND REGULATIONS: All state purchases are subject to the Utah Procurement Code, Title 63 Chapter 56 U.C.A. 1953, as amended, and the Procurement Regulations as adopted by the Utah State Procurement Policy Board. These are available on the Internet at www.purchasing.utah.gov

(Revision 14 Mar 2003 - IFB Instructions)

Multi-Step Bid
Computer Software and Consulting Services
IRS 1099-G, 945, and 945-A Reporting System
and
Integration of the 1099 Reporting System with the CUBS Information System
Utah Department of Workforce Services
Solicitation # DG4018

1. Purpose of Multi-Step Bid Process

- 1.1. The Utah Department of Workforce Services (DWS), hereinafter known as the Department, is requesting bids from vendors to provide a software package that will process and issue IRS forms - 1099-G, 945, and 945-A - with ability to provide management of the fiduciary withholding, depositing and reporting information. Reporting must cover: withheld federal and state income taxes; ORS and food stamp garnishment activities; and Benefit Overpayment Recovery (BOP) by liability periods to satisfy IRS definitions for taxable income, adjustments, and deductions. This software package will need to be integrated in the development of the Comprehensive Unemployment Benefits System (CUBS) computer information system.
- 1.2. This document is designed to provide interested bidders with sufficient basic information to submit both a technical bid and a price bid meeting minimum requirements. Under this multi-step sealed bid procurement, price bids will be considered only in the second phase and only from those bidders whose un-priced technical bids are found acceptable in the first phase.

2. Background

- 2.1. The Utah Department of Workforce Services (DWS), Workforce Information Technology Division (WIT) is developing a replacement for the GUIDE (General Unemployment Insurance Development Effort) information system, which has been in service since 1995. We are looking for 1099 Information Reporting System that will interface with the replacement system, CUBS (Comprehensive Benefits Unemployment System), which has a multi-tier Java and Oracle based architecture.
3. **Issuing Office and Bid Reference Number:** The State of Utah Division of Purchasing is the issuing office for this document and all subsequent addenda relating to it, on behalf of the Utah Department of Workforce Services. The reference number for the transaction is Solicitation # DG4018. This number must be referred to on all bids, correspondence, and documentation relating to the bid.
4. **Price Guarantee Period:** The purchase price of this application is guaranteed for 90 days from date of bid closure and pricing for maintenance and support will be identified separately.

5. Standard Contract Terms and Conditions:

5.1. State Standard Terms and Conditions: Any contract resulting from this bid will include the State's standard terms and conditions, attached at section 11.

5.2. Department of Workforce Services Standard Terms and Conditions: Any contract resulting from this bid will include the Department of Workforce Services standard terms and conditions, attached at section 12.

6. Discussion with Bidders: A discussion with a bidder to clarify their technical bid may be required at the sole discretion of the State after submittal of technical bids. However, the State may award a contract based on the initial technical bid received without discussion with the Bidder. If bidders are required to meet with the evaluation committee, any expenses incurred by the bidder will be at the bidders expense.

7. Proprietary Information: After award, all bids become public information. Proprietary information can be protected under limited circumstances such as client lists and non-public financial statements. Pricing and service elements are not considered proprietary. Bidders must clearly identify in the Executive Summary and mark in the body of the bid any specific proprietary information they are requesting to be protected. The Executive Summary must contain specific justification explaining why the information is to be protected. Bids may be reviewed and evaluated by any person at the discretion of the State. All materials submitted become the property of the State of Utah and may be returned only at the State's option.

8. Detailed Scope of Work: The purpose of the scope of work is to define clearly, concisely, and completely all the requirements and obligations of the parties with respect to the effort to be performed. Bidder will describe the details of installation and specific responsibilities to integrate the package into the Department's software environment. The scope of work will be an accurate and detailed description of the essential and technical requirements that the bidder must meet, establish clear lines of responsibility and authority between the State and the vendor, clearly describe what the State agrees to do, and form the basis for the contract. The scope of work includes the following sections: (1) Specific Technical / Skill / Proposing Vendor Requirements that must be met, (2) Services or work to be performed, (3) Timeline for completion of the work, (4) High -level description of how / where the work is to be performed, (5) Other Details as needed.

8.1. Specific Vendor Qualification Requirements: The Vendor must describe their ability to meet the following requirements. Describe in detail the functionality provided and specific resources used to meet each of the following requirements:

8.1.1. Reports must comply with governmental requirements and formatting, which is subject to change annually.

8.1.2. Provide timely fiduciary records of amounts withheld from payments, and when such amounts were paid and when they are required to be paid in the future.

- 8.1.3. Provide tools and reports to monitor daily changes in annual reporting information, requirements, and transfers; and the tools to create ad-hoc management reports.
- 8.1.4. Required information may include gross amount paid, income tax withholdings, other payment reductions by category, and benefit overpayment recoveries by tax year liability.
- 8.1.5. Obtaining accurate report information annually requires the system to extract the following types of data:
 - 8.1.5.1. Detail of all benefit payments by individual by type, date, and reductions (i.e.: Federal and State Taxes withheld, ORS Child Support Garnishment, Food Stamp Garnishments, and BOP offsets) during a calendar year.
 - 8.1.5.2. Detail of all BOP recoveries, including all types of recoveries in the CUBS (cash, check, credit card, Employment Garnishments, Tax Refund Interceptions, Benefit Offsets) and any recovery adjustments.

8.1.6. IRS Individual Information Return (Form 1099-G)

- 8.1.6.1. Correctly place information on the current 1099-G form that is sent to claimants, which is subject to changes made by the IRS.
- 8.1.6.2. Current formatting of the required report sent to the IRS.
- 8.1.6.3. Current formatting of the required report sent to the Utah State Tax Commission.

8.1.7. Fiduciary Reporting Support Tools (Forms 945 and 945A)

- 8.1.7.1. Provide staff tools and reports to make timely withholding transfers to bank accounts of the appropriate agencies and to provide information reports to the same agencies.
- 8.1.7.2. Accurately determine the bi- or tri-weekly deposit liability and required deposit dates of Federal tax withholding and maintain records of when such deposits were made.
- 8.1.7.3. Accurately determine the weekly funds transfer liability for ORS and Food Stamp garnishments; and maintain records of when transfers were made.

8.1.7.4. Accurately determine the monthly funds transfer liability for state taxes withheld; and maintain records of when transfers were made.

8.1.7.5. Complete the Form 945 (Annual Federal Tax Withholding Liability Report in conjunction with the 1099 and 1096 reports in a timely and accurate manner. Additionally, the 945-A must be completed showing the daily Fiduciary deposit records.

8.1.8. Proven success in providing the type of application, by means of at least three prior customers' endorsement of the vendor's product or services.

8.2. Product or Services to be Provided: Vendor will provide the following services:

8.2.1. Provide a software product to meet the specified requirements.

8.2.2. Provide training and support for the installation and use of the product.

8.2.3. Provide clearly defined upgrade, enhancement and maintenance path for the application. These enhancements will support federal and state changes to forms and formats.

8.3. Offeror's Commencement of Work and Anticipated Project Timeline: Work must commence as soon as reasonably possible following contract award, without any unnecessary delay. The overall project timeline is

- **Two-Step Invitation to Bid Release by State Purchasing: Tuesday, March 9, 2004.**
- **Vendor Pre-Proposal Conference Questions Due: 5pm, Friday, March 12, 2004.**
All Questions should be directed to Alan Carlsen at 801-526-9392 or E-Mail: ALANCARLSEN@utah.gov.
- **Pre-Proposal Conference: 2 pm to 4pm Monday, March 15, 2004 (Conf Room 211B, DWS Admin North, 140 E. 300 S., Salt Lake City, Utah).**
- **Two Step Bid Responses Due from Vendors: 3 pm Tuesday, March 23, 2004.**
- **Evaluation Period: March 24, 2004 thru March 30, 2004.**
- **Tentative Contract Award Date: March 31, 2004.**

8.4. High-Level Work Environment Description: This section provides vendors proposing on the two-step bid with general information about the working environment.

8.4.1. **Facilities to be provided by the Department:** The Department of Workforce Services will provide working space, networking connections, desk, telephone, and related services at the Department's Salt Lake City, Utah facility for the services described in this two-step invitation to bid.

8.4.2. **Project Management Coordination with Department:** The Department and vendor The Department and vendor plan a successful project implementation. However, to assist successful project implementation, provide sufficient high-level oversight of the

vendor's project for the Department, and assure clear lines of responsibility and authority, the following shall occur:

8.4.2.1. Department Project Oversight and Coordination Manager. The Utah Department of Workforce Services shall designate a Department Project Oversight and Coordination Manager, who will be responsible for coordination with the vendor for day to day activities under the contract. The Department Project Oversight and Coordination Manager's responsibilities shall include, but are not limited to: review of vendor provided project status reports; review and acceptance of vendor tasks and deliverables; resolution of system design or other project issues needed by the vendor on behalf of the Department; and also serve as the primary Department contact with the contractor.

8.4.2.2. Contractor Project Manager. The Contractor is required to identify in its bid proposal one individual who will manage the project for the contractor and be responsible for all aspects of the contractor's performance in connection with all deliverables, on-site vendor personnel, and services provided as a result of this RFP.

8.4.2.3. Project Status Reports. The Contractor is required to provide the Department Project Oversight and Coordination Manager with weekly status reports on project progress and any issues needing timely resolution to assure the system is provided by the scheduled date.

8.5. Other Details:

8.5.1. Invoicing: The Contractor shall submit invoices for authorization to pay to:

Utah Department of Workforce Services
Attn: Russell Smith
140 East 300 South
Salt Lake City, Utah 84111

8.5.2. Payment of Invoices: Payment of invoices will be sent via mail, or may be paid electronically at the discretion of the State. The State reserves the right to correct invoices. Each invoice must contain a unique invoice number and a customer account number, plus a detail of work completed. Each invoice must also contain a cumulative total of project billings to date.

9. Bid Response Format: All technical bids must be organized and tabbed with labels for the following headings:

9.1. Bid Form. The State's Invitation to Bid form must be completed and signed.

9.2. Executive Summary: The one or two page executive summary is to briefly describe the bidder's technical bid. This summary must highlight the major features of the technical bid. It must indicate any requirements that cannot be met by the bidder. The reader should be able to

determine the essence of the technical bid by reading the executive summary. Proprietary information requests must be identified in this section.

- 9.3. **Detailed Response:** This section should constitute the major portion of the technical bid and must contain at least the following information:

9.3.1. This section must include a complete narrative of the bidder's assessment of the work to be performed, the bidders ability and approach, and the resources necessary to fulfill the requirements. This must be included to demonstrate the bidders understanding of the desired overall performance expectations. **Bids that fail to include this assessment will be eliminated as non-responsive.**

9.3.2. A specific point-by-point response, in the order listed, to each requirement in the technical bid. **Bids that fail to include this assessment will be eliminated as non-responsive.**

- 9.4. **Price Bid:** Price will be evaluated independently from the technical bid. Only those firms who have been determined as "acceptable" during the technical evaluation (step one of the two-step bid) will proceed to the price evaluation (step two of the two-step bid). **Price should be submitted with the technical portion of your bid in a separate sealed envelope clearly marked Pricing with the bid #DG4018 and you company name on the front of the envelope** Please enumerate all costs on the attached Price Bid form. Award will be made to the lowest bid determined to have submitted a technically acceptable bid.

- 9.5. **Technical Bid Evaluation Criteria:** Each area of the evaluation criteria must be addressed in detail in the technical bid. A committee will evaluate technical bids and score each criterion as either:

9.5.1. **Acceptable** – Criterion is met.

9.5.2. **Potentially Acceptable** – Clarification from bidder is required to determine if the criterion is met; or evaluators believe that the bidder has the capability to meet the criterion by modifying their technical bid.

9.5.3. **Unacceptable** – Criterion is not met, nor is the bidder capable of meeting the criteria.

9.6. **Evaluation Criteria:** The evaluation criteria for this bid is as follows:

Criteria	Acceptable	Potentially Acceptable	Unacceptable	Evaluator Notes (any unacceptable ratings must include an explanation comment)
8.1.1 Reports meet format requirements				
8.1.2 Timely fiduciary records				
8.1.3 Monitor daily changes in annual reports				
8.1.4 Required information as specified				
8.1.5 System track data as specified				
8.1.6 Correct format of 1099				
8.1.7 Forms 945 and 945A				
8.1.8 <u>Proven success in providing the type of application</u>				

10. **The Price Proposal must be submitted in a separate envelope.**

PRICE PROPOSAL

Bidder Name: _____

Initial Purchase Price and First Year Maintenance: Provide a price bid for a license for the product(s) identified in your technical offer. This price bid must also include the first year of maintenance and support fees. Attach a detailed offer that specifies what is included with this bid. Also clearly indicate whether version upgrades are included in the proposed pricing, and if not, provide the cost for software version upgrades.

Initial Purchase and First Year Maintenance – Year 1 (a) \$ _____ (a)

Provide pricing for maintenance and support fees for the second through fifth year of product ownership.

Maintenance and Support Fees – Year 2 \$ _____

Maintenance and Support Fees – Year 3 \$ _____

Maintenance and Support Fees – Year 4 \$ _____

Maintenance and Support Fees – Year 5 \$ _____

Additional Initial Purchase / First Year Costs not Included in Above Price Quote. All proposed costs must be presented as a fully loaded hourly rate. For any proposed services that are in addition to those described above and not included in the above first year price quote, provide pricing (hourly rate and total estimated costs) for proposed consulting work described:

Installation \$ _____ / hour \$ _____

Configuration \$ _____ / hour \$ _____

Integration \$ _____ / hour \$ _____

Training \$ _____ / hour \$ _____

Other (Please describe) \$ _____ / hour \$ _____

Total Additional Consulting Services \$_____ (b)

Grand Total - First Year Costs: (a) + (b) = (c) \$_____ (c)

10. References. Provide three customer references using the format below for each reference:

Customer Name:

Contact Name and Title:

Contact Address:

Contact Telephone Number:

Contact E-mail Address:

11. **State of Utah Standard Terms and Conditions.** The following will be included in the contract, if awarded by the State of Utah for this procurement, as contract attachment A.

(CONTRACT ATTACHMENT A)
STATE OF UTAH STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** Any and all supplies, services, and equipment furnished will comply fully with all applicable Federal and State laws and regulations.
4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation

stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.

7. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.
8. **EQUAL OPPORTUNITY CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
9. **SEPARABILITY CLAUSE:** This is a declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the same persons or by persons holding the same position as persons who signed the original agreement on behalf of the parties hereto, and attached to the original signed copy of the contract.
11. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.
12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given to the other party. On termination of this contract, all accounts and payments will be processed

according to the financial arrangements set forth herein for approved services rendered to date of termination.

13. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.
14. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
15. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgment to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.
16. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, and may be available for distribution and Contractor gives the State express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make

copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.

17. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud, and Contractor's warranty obligations.
18. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the State. The State contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices listed in the contract. The State has the right to adjust or return any invoice reflecting incorrect pricing.
19. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by the State of Utah's Purchasing Card.
20. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.
21. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State.
22. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the State to declare Contractor in default of the contract:
 - a. Nonperformance of contractual requirements;
 - b. A material breach of any term or condition of this contract.The State will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State may do one or more of the following:
 - (1) Exercise any remedy provided by law;
 - (2) Terminate this contract and any related contracts or portions thereof;
 - (3) Impose liquidated damages, if liquidated damages are listed in the contract;
 - (4) Suspend Contractor from receiving future solicitations.
23. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable

control. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

24. **PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63-56-73, Utah Code Annotated, 1953, as amended).
25. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. State Standard Terms and Conditions; 2. State Special Terms and Conditions; 3. Contractor Terms and Conditions.

(Revision date: Nov 21, 2003)

- 12. Department of Workforce Services Standard Terms and Conditions.** The following will be included in the contract, if awarded by the State of Utah for this procurement, as contract attachment C.

(Note: Contract Attachment B is normally the RFP, Pre-Bid vendor Conference Meeting Minutes, Vendor's Proposal in Response to the RFP, which becomes the Scope of Work).

(CONTRACT ATTACHMENT C)
**DEPARTMENT OF WORKFORCE SERVICES (DWS) STANDARD TERMS
AND CONDITIONS**

1. **CONFLICT OF INTEREST:** The CONTRACTOR certifies, through the execution of the contract, that no person in its and the DEPARTMENT's employment, directly or through subcontract, will receive any private financial interest, direct or indirect, in the contract. The CONTRACTOR will not hire or subcontract with any person having such conflicting interest.
2. **INDEPENDENT CONTRACTOR:** CONTRACTOR acknowledges by signing this contract that no Social Security, Federal, or State taxes will be withheld from payments under this Contract. However, payments under this contract may be taxable and an information return (IRS Form 1099) showing total contract payments made during the year will be sent to all contractors and to the Internal Revenue Services.
3. **INSURANCE CLAUSE:** The CONTRACTOR agrees to provide and to maintain during the performance of the contract, at its sole expense, a policy of liability insurance naming the CONTRACTOR and the State of Utah as insured parties under the policy. Such insurance shall be amended to indicate that it is the primary coverage and not a contributing coverage for the DEPARTMENT. The limits of the policy shall be no less than \$500,000.00 for each occurrence and \$1,000,000.00 aggregate.
4. **RENEGOTIATION OR MODIFICATIONS:** No claim for services furnished by the CONTRACTOR not specifically authorized by this Contract will be allowed by the DEPARTMENT.
5. **ALLOWABLE COSTS AND PAYMENTS:** Payments to the CONTRACTOR shall be made by the DEPARTMENT after receipt of a monthly invoice submitted by the CONTRACTOR.
6. **REDUCTION OF FUNDS:** (N/A to Open-Ended Contracts): The maximum amount authorized by this contract shall be reduced or contract terminated if required by Federal/State law, regulation, or action or there is significant under utilization of funds, provided the CONTRACTOR shall be reimbursed for all services performed in accordance with this contract prior to date of reduction or termination. If funds are reduced, there will be a comparable reduction in amount of services to be given by the CONTRACTOR. The DEPARTMENT will give the CONTRACTOR thirty (30) days notice of reduction.

7. CITING DEPARTMENT IN ADVERTISING: The CONTRACTOR agrees to give credit to the Department of Workforce Services for funding in all written and verbal advertising or discussion of this program such as brochures, flyers, informational materials, talk shows, etc. All formal advertising or public information programs will be coordinated with Public Information Officer for the Department.
8. DRUG-FREE WORKPLACE: The CONTRACTOR understands that the Department provides a drug-free workplace in accordance with all federal and state laws and regulations. The CONTRACTOR agrees to abide by the Department's drug-free workplace policies while on Department premises.
9. TERMINATION (FUND-OUT): The CONTRACTOR acknowledges that DEPARTMENT cannot contract for the payment of funds not yet provided by the Federal Government or appropriated by the Utah State Legislature and the Department cannot guarantee funding under this contract since it may be altered by an act of the Federal Government or the Utah State Legislature occurring before the expiration of this contract. Therefore, in the event that Department fails to receive appropriations then the Department may, by giving at least 60 days advance written notice, terminate this contract. DEPARTMENT will reimburse CONTRACTOR for services performed up through the date of cancellation.
10. CONTRACTOR ASSIGNMENT: Notwithstanding the DEPARTMENT's right to assign the rights or duties hereunder, the CONTRACTOR agrees and understands that this contract is based on the reputation of the CONTRACTOR, and this contract may not be assigned by the CONTRACTOR without the written consent of the DEPARTMENT. Any attempted assignment by the CONTRACTOR without the DEPARTMENT'S written consent shall be wholly void.
11. OVERPAYMENT/AUDIT EXCEPTIONS/DISALLOWANCES: The CONTRACTOR agrees that if during or subsequent to the contract CPA audit or DEPARTMENT OF WORKFORCE SERVICES Internal Review & Audit determines that payments were incorrectly reported or paid, the DEPARTMENT may amend the contract and adjust the payments. In contracts, which include a budget, CONTRACTOR expenditures to be eligible for reimbursement must be adequately documented. The CONTRACTOR will, upon written request immediately refund any overpayments determined by audit and for which payment has been made to the contractor, to the DEPARTMENT. The CONTRACTOR further agrees that the DEPARTMENT shall have the right to withhold any or all-subsequent payments under this or other contracts with the CONTRACTOR until recoupment of overpayment is made.
12. SERVICE CODE COST SUMMARY: When requested by the DEPARTMENT, the CONTRACTOR shall submit to the DEPARTMENT actual cost expenditures under this contract and specific service code. If selected for review, the DEPARTMENT will request cost data as early as ninety-one (91) days after completion of the prior contract period. Reported costs shall be in accordance with the DEPARTMENT Cost Principles. Service Code Cost Summaries submitted are subject to review by DEPARTMENT audit. Therefore, Cost Summaries should agree in total (and in detail where possible) to any other financial information submitted to the DEPARTMENT. Such financial information would include audit

- reports, financial statements, etc. Cost Summaries, which are found to disagree with other financial information submitted to the DEPARTMENT, may be subject to further investigation.
13. LICENSING AND STANDARD COMPLIANCE: The CONTRACTOR currently meets all applicable licensing or other standards required by Federal and State laws or regulations and ordinances of the City/County in which services and/or care is provided and will continue to comply with such licensing or other applicable standards and ordinances for duration of this contract period. Failure to secure or maintain a license shall support a basis for cancellation of this contract.
 14. GRIEVANCE PROCEDURE: The CONTRACTOR agrees to establish a system through which recipients of the purchased services may present grievances about the operation of the program as it pertains to and affects said recipient. The CONTRACTOR will advise recipients of their right to present grievances concerning denial or exclusion from or operation of the program, and to a determination by the Department of Workforce Services in the se instances. The CONTRACTOR will advise applicants in writing of rights and procedures to appeal. In the event of a grievance, the contractor will notify the Department of the grievance and it's resolution. If no resolution is reached with the contractor, the grievance will be forwarded to the Department for processing through the Department's Administrative Process.
 15. IMPOSITION OF FEES: The CONTRACTOR will not impose any fees upon clients given services under this contract except as authorized by the DEPARTMENT.
 16. PROTECTION AND USE OF CLIENT RECORDS: The use or disclosure by any party of any information concerning a client for any purpose not directly connected with the administration of the DEPARTMENT's or the CONTRACTOR's responsibilities with respect to services purchased under this agreement is prohibited except on written consent of the client, his attorney, or his responsible parent or guardian. The Contractor will be required to sign the Confidential Information Certification.
 17. CONSULTATION/TECHNICAL ASSISTANCE: The DEPARTMENT will supply appropriate consultation/technical assistance as indicated/requested by the CONTRACTOR to assure satisfactory performance in providing the contracted services.
 18. CODE OF CONDUCT: The CONTRACTOR agrees to follow and enforce the Department of Workforce Services Code of Conduct, Utah Administrative Code, R982-601-101 et seq. The CONTRACTOR assures that each employee or volunteer receives a copy of Code of Conduct. A signed statement to this effect must be in employee's/volunteer's file subject to inspection and review by the DEPARTMENT monitors.
 19. THIRD-PARTY REIMBURSEMENT AND PROGRAM INCOME: OTHER CONTRACTS: The CONTRACTOR is required to pursue reimbursement from all other sources of funding available for services performed under this contract. Other sources of funding include, but are not limited to third-party reimbursements and program income. In no instance shall any combination of other sources of funding and billings to DEPARTMENT OF WORKFORCE SERVICES be greater than "necessary and reasonable costs to perform the services" as

- supported by audited financial records. Collections over and above audited costs shall be refunded to DEPARTMENT OF WORKFORCE SERVICES.
20. BILLINGS: Billings and claims for services must be received within twenty (20) days after the last date of service for the period billed including the final billing, which must be submitted within twenty (20) days after contract termination may be delayed or denied.
 21. FINANCIAL/COST ACCOUNTING SYSTEM: The CONTRACTOR agrees to maintain a financial and cost accounting system in accordance with generally accepted accounting principles. At a minimum, the CONTRACTOR's accounting system shall provide for a General Ledger, and cost accounting records adequate to assure that costs incurred under this contract are reasonable, allocable to contract objectives, and separate from costs associated with other business activities of the CONTRACTOR. The CONTRACTOR further agrees that all program expenditures and revenues shall be supported by reasonable documentation (vouchers, invoices, receipts, etc.), which shall be stored and filed in a systematic and consistent manner. The CONTRACTOR further agrees to retain and make available to independent auditors, State and Federal auditors, and program and contract reviewers all accounting records and supporting documentation for a minimum of four (4) years after the expiration of this contract. The CONTRACTOR further agrees that, to the extent it is unable to reasonably document the disposition of monies paid under this contract, it is subject to an assessment for over-payment.
 22. CHANGES IN BUDGET (Cost Reimbursement Contracts Only): The budget attached hereto shall be the basis for payment. The CONTRACTOR may not make any adjustment in budgeted funds from Category III, "Program Expenses" to either Category I, "Administration" or Category II, "Capital Expenditures" or between Categories I and II, without prior written approval by the DEPARTMENT. Expenditures in excess of those budgeted in either Category I or II may be considered questioned costs. Resolution of such questioned costs will normally result in a request that such excesses be refunded to the DEPARTMENT. The CONTRACTOR may, however, shift between either Category I or II to Category III without prior approval. Expenditures in excess of those budgeted in Category III will not normally result in questioned costs unless restrictions have been placed on subcategories within this major category. When the contract restricts expenditures within defined subcategories, any unapproved excess will be considered a questioned cost.
 23. NON-FEDERAL MATCH: For those contracts requiring a non-federal match said match shall be in accordance with provisions of Title 45 CFR, Part 74, Sub-part C. Other funding sources may require different non-federal match amounts will be indicated within the Budget.
 24. ADMINISTRATIVE EXPENDITURES: Total administrative expenditures (Category I) may not exceed fifteen percent of total program expenditures without prior written approval from DEPARTMENT OF WORKFORCE SERVICES, Executive Director.
 25. CONTRACT RENEWAL: The CONTRACTOR agrees, for any contract issued as a result of an RFP/bid the DEPARTMENT shall unilaterally have the right to initiate renewal of such a

contract, in accordance with the provisions of the RFP/bid at a level of funding to be decided at the time of renewal.

26. CONTRACTOR RELATIONSHIP: The relationship of the DEPARTMENT and the CONTRACTOR hereunder shall be that of an independent contractor. Under no circumstances shall an employee agent or representative of either party be represented as, or be deemed to be, an employee, agent or representative of the other party for any purpose whatsoever.
27. WARRANTIES: CONTRACTOR warrants that all services shall be performed in a professional and workmanlike manner consistent with best industry practice; and in accordance with the Work Statement. CONTRACTOR agrees to abide by all applicable laws, regulations, and industry standards when performing services for the DEPARTMENT.
28. TERMINATION UPON DEFAULT: In the event this contract is terminated as a result of a default by the CONTRACTOR, the DEPARTMENT may procure or otherwise obtain, upon such terms and conditions as the DEPARTMENT deems appropriate, services similar to those terminated, and CONTRACTOR shall be liable to the DEPARTMENT for any damages arising there from, including attorneys' fees and excess costs incurred by the DEPARTMENT in obtaining similar services.
29. GOVERNMENT RECORDS ACCESS MANAGEMENT ACT (GRAMA): The Contractor should be aware that all documents produced from this contract will be subject to the State's Access to Public Records policy, Title 63, Chapter 2, U.C.A.
30. CONTRACTOR'S RESPONSIBILITIES: The Department will enter into contractual contract with the CONTRACTOR only. The CONTRACTOR shall be responsible for all services as required by the RFP/bid.
31. HUMAN SUBJECTS RESEARCH: The CONTRACTOR shall not conduct research-involving employees of the DEPARTMENT or individuals receiving services (whether direct or contracted) from the DEPARTMENT.
32. METHOD AND SOURCE OF CONTRACTOR PAYMENT: The DEPARTMENT agrees to reimburse the CONTRACTOR in accordance with the attached budget. Warrant drawn against the State of Utah, will be made upon receipt of itemized billing for authorized services provided and supported by information contained on reimbursement forms supplied by DEPARTMENT.
33. PAYMENT WITHHOLDING: The CONTRACTOR agrees that the reporting and record keeping requirements specified in this contract are a material element of performance and that if, in the opinion of the DEPARTMENT, the CONTRACTOR's record keeping practices and/or reporting to the DEPARTMENT are not conducted in a timely and satisfactory manner, the DEPARTMENT may withhold part or all payments under this or any other contract until such deficiencies have been remedied. In the event of the payment(s) being withheld, the DEPARTMENT agrees to notify the CONTRACTOR of the deficiencies that must be corrected in order to bring about the release of withheld payment.

34. FINANCIAL REPORTING: When classified as Service Provider (not sub recipient), CONTRACTORS shall provide an independent audit of their entity in accordance with Government Auditing Standards (GAO Yellow Book). CONTRACTORS shall also provide financial statements (a balance sheet, income statement, statement of cash flows, statement of functional expense, and notes to the financial statements) prepared in accordance with Generally Accepted Accounting Principles (GAAP).

When classified as a private non-profit or profit entity, CONTRACTORS shall submit a copy of its audit report to the DEPARTMENT within one year of the close of the entity's fiscal year.

An entity filing only financial statements shall submit the financial statements within five (5) months of the close of the entity's fiscal year. If this entity chooses to submit an audit report instead of the financial statements, DEPARTMENT OF WORKFORCE SERVICES internal audit must be notified of this decision prior to the end of the five-month reporting deadline. If more time is needed, prior approval may be obtained from DEPARTMENT OF WORKFORCE SERVICES internal audit.

Audit reports and financial statements should be sent to the DEPARTMENT OF WORKFORCE SERVICES /Budget and Audit, P.O. Box 45249 Salt Lake City, Utah 84145-0249. All CONTRACTORS are subject to periodic fiscal reviews by DEPARTMENT OF WORKFORCE SERVICES.

35. MONITORING: The DEPARTMENT will monitor the service given by the CONTRACTOR for each eligible client and the results obtained using this contract and the attached goals and service objectives and methods as criteria.
36. DEPARTMENT COST PRINCIPLES: The CONTRACTOR agrees to abide by Federal and Department Cost Principles as applicable to contract.
37. NOTIFICATION OF THE INTERNAL REVENUE SERVICE: It is Department of Workforce Services' policy to notify the Internal Revenue Service of any violations of IRS regulations uncovered as a result of its dealings with providers.
38. RELATED PARTIES: The CONTRACTOR shall not make payments to related parties in any category of Administration, Capital Expenditures, or Program Expenses without the prior written consent of the DEPARTMENT. Payments to related parties may include, but are not limited to: salaries, wages, compensation under employment or service contracts, or payments under purchase, lease, or rental contracts. Payments made by the CONTRACTOR to related parties without such prior written consent may be disallowed and may result in an overpayment assessment. For the purpose of defining payments to related parties under a contract; The CONTRACTOR shall be defined to include all owners, partners, directors, and officers of the CONTRACTOR or others with authority to establish policies and make decisions for the CONTRACTOR.

Persons and/or organizations shall be considered related parties when any of the following conditions exist:

A person and/or organization with directors, officers, or others with the authority to establish policies and to make decisions for the organization who is/are related to CONTRACTOR through blood or marriage, as defined by U.C.A., Section 52-3-1(1)(d) as father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in law, or daughter-in-law.

An organization has in common with the CONTRACTOR either: a) owners or partners who directly or indirectly own ten percent (10%) or more of the voting interest of the organization; and/or b) directors, officers or others with authority to establish policies and make decisions for the organization.

The CONTRACTOR is obligated to immediately call any contemplated or actual related party payment to the attention of the DEPARTMENT. Upon notification of related party payment, the DEPARTMENT may, at its discretion, require that the CONTRACTOR undertake competitive bidding for the goods or services, require satisfactory cost justification prior to payment, or take other steps that may be necessary to assure that the goods or services provided afford the DEPARTMENT a satisfactory level of quality and cost. Any related party payments contemplated under this contract are specified as follows: (if none, please so state).

39. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA: If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract was increased by any significant sum because the CONTRACTOR furnished cost or pricing data (e.g., service code cost summaries, salary schedules, reports of prior period costs, etc.) which was not accurate, complete, and current, the price or cost shall be reduced accordingly and the contract shall be modified in writing as may be necessary to reflect such reduction, and amounts overpaid shall be subjected to overpayment assessments. Any action the DEPARTMENT may take in reference to such price reduction shall be independent of, and not be prejudicial to, the DEPARTMENT's right to terminate this contract.
40. PAYMENT RATES (Does Not Apply to Contracts With DEPARTMENT OF WORKFORCE SERVICES Set Rates): Initial payment rates for negotiated contracts may be calculated based on actual expenditures for prior period, available budget and changes in the type or quality of service. The rates may be adjusted up or down during the contract term in accordance with prior paid actual costs or a review of current costs verified by audit or fiscal review. Such a rate adjustment may be retroactive to the beginning of the contract. Rates for contracts awarded as a result of the competitive bidding process will not be changed during the contract term.
41. EQUAL OPPORTUNITY CLAUSE: Section 188 of the Workforce Investment Act of 1998 (WIA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and

against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title I-financially assisted program or activity:

Title VII of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color, and national origin;

Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;

The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in education programs.

[Rev. 4/03]

ATTACHMENT A: STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.
4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.
7. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.
8. **EQUAL OPPORTUNITY CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the same persons or by persons holding the same position as persons who signed the original agreement on behalf of the parties hereto, and attached to the original signed copy of the contract.
11. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.
12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
13. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.
14. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
15. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable

for any special purposes that the State has relied on the contractor's skill or judgment to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

16. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, and may be available for distribution, and Contractor gives the State express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.
17. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations.
18. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the State. The State contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices listed in the contract. The State has the right to adjust or return any invoice reflecting incorrect pricing.
19. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by the State of Utah's Purchasing Card.
20. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.
21. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State.
22. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the State to declare Contractor in default of the contract:
 1. Nonperformance of contractual requirements;
 2. A material breach of any term or condition of this contract. The State will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State may do one or more of the following:
 1. Exercise any remedy provided by law;
 2. Terminate this contract and any related contracts or portions thereof;
 3. Impose liquidated damages, if liquidated damages are listed in the contract;
 4. Suspend Contractor from receiving future solicitations.
23. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.
24. **PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63-56-73, Utah Code Annotated, 1953, as amended).
25. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be:
 1. State Standard Terms and Conditions;
 2. State Special Terms and Conditions;
 3. Contractor Terms and Conditions.

(Revision date: Nov 21, 2003)